

1 Tyler D. Kring, Bar No. 325588
tkring@kringandchung.com
2 KRING & CHUNG, LLP
38 Corporate Park
3 Irvine, CA 92606-5105
Telephone: (949) 261-7700
4 Facsimile: (949) 261-8800

5 Attorneys for Plaintiff
LACHLAN HEADLEY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BENITO

OCT 16 2020

Aurelia Rodriguez
BY DEPUTY CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BENITO

11 LACHLAN HEADLEY, individually, and on
behalf of all aggrieved employees,

12 Plaintiff,

13 v.

14 ALLISON JEAN CORPORATION, a California
15 corporation, and DOES 1-25, inclusive,

16 Defendants.

) Case No. CU-20-00144
) REPRESENTATIVE ACTION
) COMPLAINT FOR VIOLATIONS OF
) THE PRIVATE ATTORNEYS GENERAL
) ACT OF 2004 (Labor Code Section 2698 et
) seq.)
) DEMAND FOR JURY TRIAL
)

17
18 COMES NOW Plaintiff LACHLAN HEADLEY, in his representative capacity, with his
19 Complaint against Defendants ALLISON JEAN CORPORATION, a California corporation, and
20 DOES 1 through 25 inclusive, and hereby alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. The California Superior Court has jurisdiction over this action pursuant to California
23 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
24 causes except those given by statute to other trial courts." The Statutes under which this action is
25 brought do not specify any other basis for jurisdiction.

26 ///

27 ///

28 ///



COMPLAINT

2. Venue and jurisdiction are proper because Defendants were doing business in San Benito County; Plaintiff's employment was entered into in San Benito County; Plaintiff worked for Defendants in San Benito County; and the damages sought exceed the jurisdictional minimum of this Court.

THE PARTIES

3. Plaintiff LACHLAN HEADLEY ("Plaintiff") was at all relevant times herein, an individual residing in San Benito County, California and was employed by Defendants ALLISON JEAN CORPORATION and DOES 1 through 25 inclusive.

4. Plaintiff is informed, believes, and thereon alleges that Defendant ALLISON JEAN CORPORATION ("AJC") is, and at all times mentioned herein was, a business organized under California laws registered to do business and actively doing business in the State of California, with its principal place of business in Hollister, California. At all times hereinafter mentioned, Defendant AJC was an employer whose employees were engaged in this county and the State of California.

5. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues said Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of the Defendants designed herein as DOE is legally responsible in some manner for the events and happenings referred to herein, and caused injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities of the Defendants designated herein as DOES when the same have been ascertained. Whenever in this Complaint reference is made to "Defendants," such allegation shall be deemed to mean the acts of Defendants acting individually, jointly, or severally.

6. Plaintiff is informed, believes, and thereon alleges that Defendants were his "Employer" as that term is defined in the applicable Wage Order of the Industrial Welfare Commission ("IWC"). Plaintiff is informed and believes and thereon alleges that, at all relevant times mentioned herein, Defendants were Plaintiff's employer.



1 **JOINT LIABILITY**

2 7. Except as hereinafter specially described, Defendants, and each of them, are and
3 were the agents and/or employees of the other Defendants, and in acting as described herein were
4 acting within the scope of their authority or employment as agents and/or employees thereof, and
5 with the permission and consent of the other Defendants.

6 8. As to each of the Defendants, Plaintiff is informed, believes, and thereon alleges
7 that, at all relevant times mentioned herein, each Defendant was the principal, agent, employer,
8 employee, partner, joint venture, officer, director, controlling shareholder, alter ego, subsidiary,
9 affiliate, parent corporation, successor in interest and predecessor in interest of some or all of the
10 other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise
11 for profit, and bore such other relationships to some or all of the other Defendants, so as to be liable
12 for the conduct of them.

13 9. Plaintiff is further informed, believes, and thereon alleges that each Defendant acted
14 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
15 should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the
16 conduct of all other Defendants; and that each Defendant acted pursuant to a conspiracy and
17 agreement to do the things alleged herein.

18 **GENERAL BACKGROUND FACTS**

19 10. AJC is an owner and operator of franchise restaurants with approximately thirty-
20 seven (37) total employees.

21 11. Plaintiff began his employment with AJC on or about February 8, 2010 and worked
22 for AJC until his employment was terminated on or about May 15, 2020.

23 12. Throughout his employment with AJC, Plaintiff worked at AJC's Hollister,
24 California Burger King location as one of AJC's delivery drivers.

25 13. Neither at the time of Plaintiff's hire, nor any time thereafter, did AJC provide him
26 with a written notice communicating all of the following: the rate or rates of pay and basis thereof;
27 allowances, if any, claimed as part of the minimum wage; the regular payday designated by the
28 employer; the name of the employer, including "dba" names used; the physical address of the



1 employer's main office of principal place of business; the telephone number of the employer;
2 contact information of the employer's workers' compensation insurance carrier; that the employee
3 may accrue and use sick leave, among other things related; and any other information the Labor
4 Commissioner deems material and necessary.

5 14. Further, upon information and belief, all other hourly non-exempt employees of
6 AJC were not, and continue to not be, provided with a requisite Notice to Employee.

7 15. From the beginning of AJC's employ of Plaintiff, AJC and AJC's supervisors made
8 every effort to prohibit, not only Plaintiff, but each of its non-exempt delivery driver employees
9 from taking meal and rest periods.

10 16. As Plaintiff's employment with AJC progressed, Plaintiff began to familiarize
11 himself with California labor laws, specifically those pertaining to meal and rest periods.

12 17. After years of not being provide with the opportunity to take rest periods and having
13 to take late meal periods, Plaintiff reported such violations to his manager Felicia Regalado ("Ms.
14 Regalado").

15 18. Plaintiff estimates that, typically due to an influx of incoming orders and requests
16 for deliveries, he was prohibited from taking his ten (10) minute rest periods on eighty (80) percent
17 of his shifts while working for AJC. Additionally, as AJC's time records for Plaintiff will show, he
18 was unable to take his thirty (30) minute meal period before the end of the fifth (5th) hour of work
19 on multiple occasions. Despite AJC's failure to provide Plaintiff with meal and/or rest periods,
20 AJC never provided Plaintiff with a meal or rest period premium in lieu of such.

21 19. On or about May 15, 2020, Plaintiff became irritated that he had worked for AJC for
22 over ten (10) years and did not receive proper meal or rest periods throughout his employment.

23 20. Accordingly, Plaintiff asked his manager, Ms. Regalado, for a ten (10) minute break
24 and stated that it was his "right." Instead of giving him the breaks to which he was lawfully
25 entitled to, Mr. Saavedra and Ms. Regalado called Plaintiff into the office on the very same day on
26 or about May 15, 2020 and abruptly terminated his employment.

27 21. Instead of taking Plaintiff seriously as a protected whistleblower, AJC terminated
28 him for reporting such violations of the law to his superiors. These facts create the objectively



1 reasonable inference that AJC terminated Plaintiff's employment in retaliation for his blowing the
2 whistle on unlawful conduct.

3 22. Throughout Plaintiff's employment with AJC, Plaintiff received gratuities directly
4 from customers.

5 23. Rather than compensate Plaintiff for all hours worked, AJC calculated his pay by
6 multiplying his hours worked in any given pay period by the applicable California minimum wage
7 and subtracting/offsetting cash gratuities Plaintiff received from customers and was lawfully
8 entitled.

9 24. Each of AJC's wage statements for Plaintiff have a section titled "Adjustments to
10 Net Pay" and list "Reported Cash Tips (offset)." For example, during the pay period of April 20,
11 2020 to May 3, 2020, Plaintiff's corresponding wage statement indicates he worked a total of 39.78
12 hours. Plaintiff was paid for each of those hours at the minimum wage rate of \$13.00 per hour.
13 Although, AJC then deducted from his earnings a total of \$321.20, resulting in a total net pay of
14 \$408.08 and a gross pay far below the applicable California minimum wage. This practice of
15 deducting cash gratuities was routine throughout each and every pay period of Plaintiff's
16 employment with AJC.

17 25. Upon information and belief, AJC subtracted and/or offset cash gratuities from
18 customers for all of its delivery employees as well.

19 26. Plaintiff was required and expected to routinely use his personal cell phone for work
20 every day of his employment with AJC. Without a work-provided telephone or navigation system,
21 personal cell phone use was crucial in order for Plaintiff and other delivery employees to properly
22 perform their duties. Delivery employees used their personal cell phones to call customers if
23 necessary and navigate to delivery locations. AJC was fully aware that many receipts would
24 specifically request that AJC's delivery employees call the customer when arriving at the delivery
25 location.

26 27. At no point during or at the conclusion of Plaintiff's employment was he reimbursed
27 for such necessary business-related expenses.

28 ///



1 28. Upon information and belief, each of the other approximately fifteen (15) delivery
2 employees were also required and expected to use their personal cell phone for work-related
3 purposes and AJC never reimbursed them for such usage.

4 29. As a result of the aforementioned violations, AJC failed to provide Plaintiff with a
5 single proper itemized wage statement throughout his employment. Among other things, Plaintiff's
6 wage statements did not include his proper gross or net wages earned, impermissibly deducted
7 gratuities, and failed to list proper business reimbursements.

8 30. As of the date of the filing of this Complaint, AJC has still not paid all of Plaintiff's
9 wages that were then due and owing to Plaintiff on the date of his termination, on or about May 15,
10 2020.

11 31. Upon information and belief, at least fifteen (15) current and/or former employees
12 of Defendant are aggrieved employees as defined under California Labor Code section 2699(c).

13 32. Upon information and belief, the fifteen (15) aggrieved employees were delivery
14 employees and thus similarly prohibited from taking meal and rest periods, had gratuities
15 impermissibly offset from their wages, and did not receive business reimbursements or the requisite
16 notice to employee and therefore have resulting claims associated with such.

17 33. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
18 ("PAGA"), Labor Code section 2698 *et seq.* on behalf of the State of California and on a
19 representative basis on behalf of all California current and former employees of AJC.

20 34. Plaintiff filed a PAGA Notice with the Labor and Workforce Development Agency
21 ("LWDA") on June 4, 2020. Therefore, Plaintiff has waited the mandatory sixty-five (65) days
22 since filing her PAGA Notice.

23 35. On July 31, 2020, Plaintiff and AJC, by and through their respective counsel of
24 record, entered into a Tolling Agreement agreeing to toll the statute of limitations for Plaintiff's
25 PAGA claims, among others, against AJC for the period of July 15, 2020 through October 15, 2020
26 ("Tolling Period"). Applicable statute of limitations shall not run during the Tolling Period until
27 after October 15, 2020.

28 36. Therefore, the Tolling Period has run as of the date of the filing of this Complaint.



FIRST CAUSE OF ACTION
CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (“PAGA”)
(Labor Code § 2698 *et seq.*)
(Against All Defendants)

37. Plaintiff realleges and incorporates each preceding paragraph as though fully set forth herein.

38. California Labor Code sections 2698-2699.5, in relevant part, provides, “any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency. . . for a violation of this code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in section 2699.3.”

39. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged to have been violation, and after receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days have passed without notice.

40. To the extent applicable, Plaintiff has satisfied in full the requirements of Labor Code section 2699.3. Plaintiff sent notice to AJC and the LWDA on or about June 4, 2020, detailing AJC’s alleged Labor Code violations. In particular, Plaintiff’s notice alleged violations of Labor Code sections 1102.5; 1197.5; 221; 351; 353; 354; 1194; 510; 1198; 226.7; 512; 1198; 2802; 226; 2810.5; 201; and 203.

41. LWDA did not provide notice of its intention to investigate AJC’s alleged violations within sixty-five (65) calendar days of the postmark date of Plaintiff’s notice.

42. Plaintiff is an “aggrieved employee” under PAGA because she was employed by AJC during the applicable statutory period and suffered one or more of the Labor Code violations set forth in this Complaint.

43. Plaintiff seeks to recover, on her behalf, on behalf of the State, and on behalf of all former and current aggrieved employees of Defendants, the civil penalties provided by PAGA, plus



1 reasonable attorney's fees and costs through a representative action permitted by PAGA and the
2 California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Therefore, class
3 certification is not required.

4 44. Plaintiff seeks penalties pursuant to PAGA for the following Labor Code violations:

5 A. Whistleblower retaliation in violation of Labor Code section 1102.5;

6 B. Unlawful deductions in violation of Labor Code sections 221, 351, 353, and
7 354;

8 C. Failure to pay minimum wage in violation of Labor Code section 1194;

9 D. Failure to pay all wages including overtime wages in violation of Labor Code
10 sections 510, 1194, and 1198;

11 E. Failure to provide meal and rest periods in violation of Labor Code sections
12 226.7 and 512;

13 F. Failure to record meal periods in violation of Labor Code section 1198;

14 G. Failure to reimburse expenses in violation of Labor Code 2802;

15 H. Failure to provide accurate itemized wage statements in violation of Labor Code
16 section 226;

17 I. Failure to provide requisite notice to employee in violation of Labor Code
18 section 2810.5;

19 J. Failure to pay all wages due and payable upon separation of employment in
20 violation of Labor Code sections 201 and 203;

21 45. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars
22 (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars
23 (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code
24 provisions for which a civil penalty is not specifically provided.

25 46. As a proximate result of the action and conduct described in the paragraphs above,
26 which constitute violations of certain Labor Code sections, Plaintiff and all other aggrieved
27 employees have been damaged in an amount according to proof at the time of trial and seeks civil
28 penalties and attorney's fees pursuant to Labor Code section 2699(f) and (g) against Defendants.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays, individually and on behalf of aggrieved employees,
3 judgment against Defendants, and each of them, as follows:

- 4 1. For an award of civil penalties pursuant to PAGA;
5 2. For an award of reasonable attorney's fees and costs pursuant to Labor Code section
6 2699(g) and/or other applicable law;
7 3. For pre-judgment and post-judgment interest as provided by law; and
8 4. For such other and further relief as the Court deems just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

11 Dated: October 16, 2020

KRING & CHUNG, LLP

12
13 By: _____

14 Tyler D. Krings
15 Attorneys for Plaintiff
16 LACHLAN HEADLEY
17
18
19
20
21
22
23
24
25
26
27
28

